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7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SANTA ANA DIVISION**

11 In re Case No. 8:21-bk-12330-TA
12 SOPHIA SANTOS RAMOS, Chapter 7
13 Debtor. Adv. No.

14 WENETA M.A. KOSMALA, solely in her
15 capacity as chapter 7 trustee of the
bankruptcy estate of Sophia Santos
16 Ramos,

17 Plaintiff,

18 EDWIN JOAQUIN RAMOS, an individual,

19 Defendant.

20 **COMPLAINT:**

- 21 **(1) TO AVOID FRAUDULENT
TRANSFER PURSUANT TO 11
U.S.C. § 548(a)(1)(A);**
**(2) TO AVOID FRAUDULENT
TRANSFER PURSUANT TO 11
U.S.C. § 548(a)(1)(B);**
**(3) FOR RECOVERY OF AVOIDED
TRANSFERS UNDER 11 U.S.C.
§ 550;**
**(4) TO PRESERVE TRANSFER FOR
THE BENEFIT OF THE ESTATE
PURSUANT TO 11 U.S.C. § 551;**
**(5) FOR AUTHORIZATION TO SELL
REAL PROPERTY IN WHICH CO-
OWNER HOLDS INTEREST
PURSUANT TO 11 U.S.C. § 363(h);**
and
**(6) FOR TURNOVER OF PROPERTY
OF THE ESTATE**

1 **TO DEFENDANT EDWIN JOAQUIN RAMOS:**

2 Plaintiff Weneta M.A. Kosmala, the duly appointed, qualified and acting Chapter 7
3 trustee ("Trustee") for the bankruptcy estate ("Estate") of Sophia Santos Ramos
4 ("Debtor"), hereby files this complaint: (1) To Avoid Fraudulent Transfer Pursuant to 11
5 U.S.C. § 548(a)(1)(A); (2) To Avoid Fraudulent Transfer Pursuant to 11 U.S.C. §
6 548(a)(1)(B); (3) For Recovery of Avoided Transfers Under 11 U.S.C. § 550; (4) To
7 Preserve Transfer for the Benefit of the Estate Pursuant to 11 U.S.C. § 551, (5) For
8 Authorization to Sell Real Property in Which Co-Owner Holds Interest Pursuant to 11
9 U.S.C. § 363(h); and (6) For Turnover of Property of the Estate ("Complaint") against
10 Edwin Joaquin Ramos an individual ("Defendant"), and alleges that:

11 **STATEMENT OF JURISDICTION AND VENUE**

12 1. The Bankruptcy Court has jurisdiction over this adversary proceeding
13 pursuant to 28 U.S.C. §1334, 11 U.S.C. §§ 105, 323, 363(h), 541, 542, 544, 547, 548, 550
14 and 551. This adversary proceeding is a core proceeding pursuant to 28 U.S.C.
15 § 157(b)(2)(A), (E), (F), (H) and (O).

16 2. The Bankruptcy Court has constitutional jurisdiction to enter a final judgment
17 in this adversary proceeding. To the extent the Court does not have constitutional
18 jurisdiction to enter a final judgment, the Plaintiff consents to the Court entering a final
19 judgment in this proceeding.

20 3. Venue properly lies in this judicial district in that the civil proceeding arises
21 under title 11 of the United States Code as provided in 28 U.S.C. § 1409.

22 4. This adversary proceeding arises out of and relates to the case entitled *In re*
23 *Sophia Santos Ramos*, Case No. 8:21-bk-12330-TA, filed on September 27, 2021, and
24 currently pending in the United States Bankruptcy Court, Central District of California,
25 Santa Ana Division.

STATEMENT OF STANDING

5. Debtor filed a Chapter 7 bankruptcy petition on July 1, 2020 ("Petition Date").

4 6. Plaintiff was subsequently appointed as the duly qualified and acting
5 Chapter 7 trustee of the Debtor's Estate.

6 7. Plaintiff has standing to bring this action pursuant to 11 U.S.C. §§ 323, 542,
7 544, 548, 550 and 551.

PARTIES TO THE ACTION

9 8. Plaintiff is the duly appointed, qualified and acting Chapter 7 trustee for the
10 Debtor's Estate. This action is brought by Plaintiff in his representative capacity only.

11 9. Plaintiff is informed, believes, and alleges that Edwin Joaquin Ramos
12 ("Defendant") is an individual residing at 5685 East Calle Canada, Anaheim, California
13 92807 ("Property") and spouse of the Debtor.

GENERAL ALLEGATIONS

15 10. Plaintiff realleges and incorporates each and every allegation contained in
16 paragraphs 1 through 9 as though fully set forth herein.

17 11. Plaintiff is informed, believes, and alleges that the Debtor listed the Property
18 in her Schedule A/B, claiming a full interest in the Property and stating that “Debtor
19 separated from Spouse in November, 2019 and quit-claim the property to him.”

20 12. Plaintiff claimed a homestead exemption on her Schedule C in the amount
21 of \$355,714.00.

22 13. Plaintiff is informed, believes, and alleges that the Debtor acquired the
23 Property by grant deed recorded on or about March 6, 2018.

24 14. Plaintiff is informed, believes, and alleges that the Debtor and the Defendant
25 cohabited the Property after it was acquired by the Debtor in 2018 except for a brief spell
26 in 2019.

27 15. Plaintiff is informed and believes, and on that on or about November 22,
28 2019, the Debtor transferred her interest in the Property to the Defendant ("Transfer") by

1 executing and delivering to Defendant a quitclaim deed which was subsequently recorded
2 in the County Recorder's Office for the County of Orange as Document Number
3 2019000490053.

4 16. Plaintiff is informed, believes, and alleges that the Debtor received less than
5 reasonably equivalent value in exchange for the Transfer as a result of the Debtor's equity
6 in the Property at the time of the Transfer.

FIRST CLAIM FOR RELIEF

(For Avoidance of Transfer Under 11 U.S.C. §548(a)(1)(A))

9 17. Plaintiff incorporates each and every allegation contained in paragraphs 1
10 through 16, as though fully set forth herein.

11 18. Plaintiff is informed and believes and on that basis alleges that the Transfer
12 occurred within two years of the Petition Date.

13 19. Plaintiff is informed and believes and on that basis alleges that the Transfer
14 was made with the actual intent to hinder, delay or defraud an existing or future creditor of
15 the Debtor.

16 20. Plaintiff is informed and believes and on that basis alleges that creditors
17 existed at the time of the Transfer that remained unpaid as of the Petition Date.

18 21. Plaintiff is informed and believes and on that basis alleges that the Debtor
19 made the Transfer to or for the benefit of the Defendant.

20 22. Plaintiff is informed and believes and on that basis alleges that the Debtor
21 received less than reasonably equivalent value from Defendant for the Transfer.

22 23. Plaintiff is informed and believes, and on that basis alleges that Debtor was
23 insolvent at the time of the Transfer and/or was rendered insolvent by virtue of the
24 Transfer.

25 24. Plaintiff is informed and believes, and on that basis alleges that Defendant
26 did not take the Transfer in good faith.

27 25. By reason of the foregoing, the Transfer is avoidable pursuant to 11 U.S.C.
28 § 548(a)(1)(A) and the Plaintiff is entitled to judgment setting aside the Transfer.

SECOND CLAIM FOR RELIEF

(For Avoidance of Transfer Under 11 U.S.C. §548(a)(1)(B))

3 26. Plaintiff incorporates each and every allegation contained in paragraphs 1
4 through 25, as though fully set forth herein.

5 27. Plaintiff is informed and believes and on that basis alleges that the Transfer
6 occurred within two years of the Petition Date.

7 28. Plaintiff is informed and believes and on that basis alleges that the Transfer
8 was made on behalf of the Defendant, and for the benefit of the Defendant, who did not
9 provide the Debtor with reasonably equivalent value in exchange for the Transfer.

10 29. Plaintiff is informed and believes and on that basis alleges that the Debtor
11 was insolvent on the date of the Transfer or became insolvent as a result of the Transfer.

12 30. Plaintiff is informed and believes and on that basis alleges that Defendant
13 did not take the Transfer in good faith.

14 31. By reason of the foregoing, the Transfer is avoidable pursuant to 11 U.S.C.
15 § 548(a)(1)(B) and the Plaintiff is entitled to judgment setting aside the Transfer.

THIRD CLAIM FOR RELIEF

(For Recovery of Avoided Transfers Under 11 U.S.C. § 550)

18 32. Plaintiff incorporates each and every allegation contained in paragraphs 1
19 through 31, as though fully set forth herein.

20 33. Plaintiff is informed and believes, and on that basis alleges that the Transfer
21 is avoidable

22 34. Plaintiff is informed and believes and on that basis alleges that the
23 Defendant is a transferee within the meaning of 11 U.S.C. § 550(a)

24 35. Plaintiff is entitled to judgment for the recovery of the Debtor's interest in the
25 Property transferred as a result of the Transfer, or the value thereof, including any
26 increase of the value of the Property since the time of the Transfer, together with interest
27 at the applicable rate from the date the property was transferred under the Transfer, for
28 the benefit of the Estate.

FOURTH CLAIM FOR RELIEF
**(To Preserve Transfer for the Benefit of the Estate
Pursuant to 11 U.S.C. §551)**

36. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 35, as though fully set forth herein.

37. Pursuant to 11 U.S.C. § 551, if the Transfer is avoided, the Transfer is preserved for the benefit of the Estate.

FIFTH CLAIM FOR RELIEF

38. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 37 as though set forth in full herein.

39. Plaintiff is informed and believes and based thereon alleges that partition in kind of the Property among the Estate and the Defendant is impracticable.

40. Plaintiff is informed and believes and based thereon alleges that the sale of the Estate's undivided interest in the Property would realize significantly less for the Estate than the sale of the Property free of the interests of the Defendant.

41. Plaintiff is informed and believes and based thereon alleges that the benefit to the Estate of a sale of the Property free of the interests of the Defendant outweighs the detriment, if any, to the Defendant.

42. Plaintiff is informed and believes and based thereon alleges that the Property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

43. For the aforementioned reasons, Plaintiff may sell both the Estate's interest, under 11 U.S.C. §363(b), and the interests of the Defendant in the Property pursuant to 11 U.S.C. §363(h).

SIXTH CLAIM FOR RELIEF

(For Turnover of Estate Property Pursuant to 11 U.S.C. §542)

3 44. Plaintiff realleges and incorporates by reference each and every allegation
4 contained in paragraphs 1 through 43 as though set forth in full herein.

5 45. Plaintiff is informed, believes, and alleges that the Property is, or will be,
6 property of the Estate that the Plaintiff has standing to administer for the benefit of the
7 Estate. The Plaintiff is not presently in possession of the Property.

8 46. The Plaintiff is informed, believes, and based thereon alleges that the
9 Property is in the possession of the Defendant and/or the Debtor.

10 47. Pursuant to 11 U.S.C. § 542(a), the Plaintiff seeks an order compelling the
11 turnover of the Property from the Debtor and the Debtor and/or any other party in
12 possession of the Property so that she can administer the Property for the benefit of the
13 Debtor's creditors.

SEVENTH CLAIM FOR RELIEF

(For Payment of Costs of Sale Pursuant to 11 U.S.C. §363(j))

16 48. Plaintiff realleges and incorporates by reference each and every allegation
17 contained in paragraphs 1 through 47 as though set forth in full herein.

18 49. Section 363(j) states that: "After a sale of property to which subsection (g) or
19 (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-
20 owners of such property, as the case may be, and to the estate, the proceeds of such
21 sale, less the costs and expenses, not including any compensation to the trustee, of such
22 sale, according to the interests of such spouse or co-owners, and of the estate."

23 50. The Plaintiff is informed, believes, and based thereon alleges that Section
24 363(j) directs that, before distributing sale proceeds, the trustee must first deduct from the
25 proceeds the costs and expenses of the sale, and the costs of sale are therefore pro-rated
26 among the co-owners or spouse and the estate.

27 51. The Plaintiff is informed, believes, and based thereon alleges that all
28 secured liens, including real property taxes outstanding and mortgage balances are

1 squarely in the scope of costs and expenses of Section 363(j) to be deducted by the
2 Trustee prior to the distribution of sale proceeds to the co-owner of the Property. *In re*
3 *Flynn*, 297 B.R. 599, 604 (9th Cir. B.A.P. 2003) (“We agree with the bankruptcy court that
4 the phrase ‘costs and expenses of such sale’ subsumes expenses that benefit and
5 facilitate the transaction in a material manner.”) (rev’d on other grounds, 418 F.3d 1005
6 (9th Cir. 2005)).¹

7 52. Pursuant to Section 363(j), the costs and expenses of the sale of the
8 Property pursuant to Section 363(h), including all secured liens, including real property
9 taxes outstanding and mortgage balances to secured lenders, should be deducted prior to
10 the distribution of sale proceeds to the co-owner of the Property.

12 **WHEREFORE**, the Plaintiff prays that this Court enter a judgment against the
13 Defendant as follows:

On the First Claim for Relief

15 1. For judgment that the Debtor's interest in the Property transferred to the
16 Defendant is avoided and/or providing any other remedy available under applicable law.

On the Second Claim for Relief

18 2. For judgment that the Debtor's interest in the Property transferred to the
19 Defendant under the Grant Deed is avoided and/or providing any other remedy available
20 under applicable law.

On the Third Claim for Relief

22 4. For judgment that the Debtor's interest in the Property transferred to the
23 Defendant under the Grant Deed is avoided and/or providing any other remedy available
24 under applicable law.

²⁷ The subsequent Ninth Circuit case reversed holding that (1) attorneys' fees are not "costs and expenses" pursuant to § 363(j) as they are expenses of the trustee and (2) the co-owner must be paid immediately pursuant to § 363(j).

1 **On the Fourth Claim for Relief**

2 5. For judgment avoiding and preserving the Transfer for the benefit of the
3 Estate pursuant to 11 U.S.C. § 551.

4 **On the Fifth Claim for Relief**

5 6. For judgment that Plaintiff may sell both the Estate's interest, pursuant to 11
6 U.S.C. §363(b), and the interests of Defendant, pursuant to 11 U.S.C. § 363(h), in the
7 Property.

8 **On the Sixth Claim for Relief**

9 7. For judgment that the Property be turned over to the Plaintiff pursuant to 11
10 U.S.C. §542 at a time and place designated by the Plaintiff so that the Plaintiff can
11 administer the Property for the benefit of the Estate.

12 **On the Seventh Claim for Relief**

13 8. For judgment that the costs and expenses of the sale of the Property
14 pursuant to §363(h), including all secured liens, including real property taxes outstanding
15 and mortgage balances to secured lenders, should be deducted prior to the distribution of
16 sale proceeds to the co-owner of the Property.

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On All Claims for Relief

2 9. For judgment awarding the Plaintiff his costs and attorneys' fees incurred in
3 this proceeding.

4 10. For judgment awarding pre-judgment and post-judgment interest at the
5 maximum legal rate; and

6 11. For judgment awarding such other and further relief as the Court deems just
7 and proper.

Respectfully submitted,

9 | Dated: May 17, 2022

WEILAND GOLDEN GOODRICH LLP

By: /s/ Jeffrey I. Golden

JEFFREY I. GOLDEN

Attorneys for Weneta M.A. Kosmala,
Chapter 7 Trustee

ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)		ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS WENETA M.A. KOSMALA		DEFENDANTS EDWIN JOAQUIN RAMOS,
ATTORNEYS (Firm Name, Address, and Telephone No.) Weiland Golden Goodrich LLP 650 Town Center Drive Suite 600 Costa Mesa, CA 92626		ATTORNEYS (If Known)
PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input checked="" type="checkbox"/> Trustee		PARTY (Check One Box Only) <input type="checkbox"/> Debtor <input type="checkbox"/> U.S. Trustee/Bankruptcy Admin <input type="checkbox"/> Creditor <input type="checkbox"/> Other <input type="checkbox"/> Trustee
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Complaint: (1) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 48(A)(1)(A); (2) To Avoid Fraudulent Transfer Pursuant To 11 U.S.C. § 548(A)(1)(B); (3) For Recovery Of Avoided Transfers Under 11 U.S.C. § 550; (4) To Preserve Transfer For The Benefit Of The Estate Pursuant To 11 U.S.C. § 551; (5) For Authorization To Sell Real Property In Which Co-Owner Holds Interest Pursuant To 11 U.S.C. § 363(H); And (6) For Turnover Of Property Of The Estate		
NATURE OF SUIT (Number up to five (5) boxes starting with lead cause of action as 1, first alternative cause as 2, second alternative cause as 3, etc.)		
FRBP 7001(1) – Recovery of Money/Property <input type="checkbox"/> 11-Recovery of money/property - §542 turnover of property <input type="checkbox"/> 12-Recovery of money/property - §547 preference <input checked="" type="checkbox"/> 13-Recovery of money/property - §548 fraudulent transfer <input checked="" type="checkbox"/> 14-Recovery of money/property - other		FRBP 7001(6) – Dischargeability (continued) <input type="checkbox"/> 61-Dischargeability - §523(a)(5), domestic support <input type="checkbox"/> 68-Dischargeability - §523(a)(6), willful and malicious injury <input type="checkbox"/> 63-Dischargeability - §523(a)(8), student loan <input type="checkbox"/> 64-Dischargeability - §523(a)(15), divorce or separation obligation (other than domestic support) <input type="checkbox"/> 65-Dischargeability - other
FRBP 7001(2) – Validity, Priority or Extent of Lien <input type="checkbox"/> 21-Validity, priority or extent of lien or other interest in property		FRBP 7001(7) – Injunctive Relief <input type="checkbox"/> 71-Injunctive relief – imposition of stay <input type="checkbox"/> 72-Injunctive relief – other
FRBP 7001(3) – Approval of Sale of Property <input type="checkbox"/> 31-Approval of sale of property of estate and of a co-owner - §363(h)		FRBP 7001(8) Subordination of Claim or Interest <input type="checkbox"/> 81-Subordination of claim or interest
FRBP 7001(4) – Objection/Revocation of Discharge <input type="checkbox"/> 41-Objection / revocation of discharge - §727(c),(d),(e)		FRBP 7001(9) Declaratory Judgment <input type="checkbox"/> 91-Declaratory judgment
FRBP 7001(5) – Revocation of Confirmation <input type="checkbox"/> 51-Revocation of confirmation		FRBP 7001(10) Determination of Removed Action <input type="checkbox"/> 01-Determination of removed claim or cause
FRBP 7001(6) – Dischargeability <input type="checkbox"/> 66-Dischargeability - §523(a)(1),(14),(14A) priority tax claims <input type="checkbox"/> 62-Dischargeability - §523(a)(2), false pretenses, false representation, actual fraud <input type="checkbox"/> 67-Dischargeability - §523(a)(4), fraud as fiduciary, embezzlement, larceny (continued next column)		Other <input type="checkbox"/> SS-SIPA Case – 15 U.S.C. §§78aaa <i>et.seq.</i> <input type="checkbox"/> 02-Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy case)
<input type="checkbox"/> Check if this case involves a substantive issue of state law		<input type="checkbox"/> Check if this is asserted to be a class action under FRCP 23
<input type="checkbox"/> Check if a jury trial is demanded in complaint		Demand \$
Other Relief Sought		

B1040 (FORM 1040) (12/15)

BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR SOPHIA SANTOS RAMOS	BANKRUPTCY CASE NO. 8:21-bk-12330-TA	
DISTRICT IN WHICH CASE IS PENDING CENTRAL DISTRICT	DIVISION OFFICE SANTA ANA	NAME OF JUDGE T. ALBERT
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT IN WHICH ADVERSARY IS PENDING	DIVISION OFFICE	NAME OF JUDGE
SIGNATURE OF ATTORNEY (OR PLAINTIFF) <i>/s/ Jeffrey I. Golden</i>		
DATE 05/17/2022	PRINT NAME OF ATTORNEY (OR PLAINTIFF) Jeffrey I. Golden	

INSTRUCTIONS

The filing of a bankruptcy case creates an “estate” under the jurisdiction of the bankruptcy court which consists of all of the property of the debtor, wherever that property is located. Because the bankruptcy estate is so extensive and the jurisdiction of the court so broad, there may be lawsuits over the property or property rights of the estate. There also may be lawsuits concerning the debtor’s discharge. If such a lawsuit is filed in a bankruptcy court, it is called an adversary proceeding.

A party filing an adversary proceeding must also complete and file Form 1040, the Adversary Proceeding Cover Sheet, unless the party files the adversary proceeding electronically through the court’s Case Management/Electronic Case Filing system (CM/ECF). (CM/ECF captures the information on Form 1040 as part of the filing process.) When completed, the cover sheet summarizes basic information on the adversary proceeding. The clerk of court needs the information to process the adversary proceeding and prepare required statistical reports on court activity.

The cover sheet and the information contained on it do not replace or supplement the filing and service of pleadings or other papers as required by law, the Bankruptcy Rules, or the local rules of court. The cover sheet, which is largely self-explanatory, must be completed by the plaintiff’s attorney (or by the plaintiff if the plaintiff is not represented by an attorney). A separate cover sheet must be submitted to the clerk for each complaint filed.

Plaintiffs and Defendants. Give the names of the plaintiffs and defendants exactly as they appear on the complaint.

Attorneys. Give the names and addresses of the attorneys, if known.

Party. Check the most appropriate box in the first column for the plaintiffs and the second column for the defendants.

Demand. Enter the dollar amount being demanded in the complaint.

Signature. This cover sheet must be signed by the attorney of record in the box on the second page of the form. If the plaintiff is represented by a law firm, a member of the firm must sign. If the plaintiff is pro se, that is, not represented by an attorney, the plaintiff must sign.